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BY FACSIMILE AND U. S. MAIL

Honorable Liane M. Randolph, Chair
Honorable Philip Blair, Commissioner
Honorable Sheridan Downey III, Commissioner
Honorable Pamela Karlan, Commissioner
Honorable Thomas Knox, Commissioner

Re: Proposed Regulation 18427.1

Dear Chair Randolph and Commissioners:

This is to support the adoption of Regulation 18427.1, as proposed by staff at the 2002 suggestion of Vigo G. Nielsen, Jr., Esq., and to suggest the Commission should take an even more radical step – actively sponsor an amendment of the Political Reform Act to eliminate major donor filing requirements for state filers and in all local jurisdictions that have implemented online electronic filing requirements.

California is the only state of which we are aware that imposes filing requirements on donors other than recipient committees. While the campaign reform community remains enamored with this requirement, the whole system of major donor reporting and enforcement does not present a pretty picture.

Until 1998, the Commission did not actively prosecute and fine major donors for late filings. In 1998, Tony Miller engendered an uproar when he began using then-nascent electronic filings with the Secretary of State to launch a broad-frontal assault on major donors and the private campaign financing system (by engaging in private attorney general enforcement). More than 300 complaints were filed by Miller, which resulted in a flurry of private lawsuits and settlements.

The undersigned was very active at that time in seeking the Commission to play a greater role to supplant the private attorney general enforcement that was taking place by

default. Along with others, I suggested a 'traffic ticket' approach to Commission enforcement. I confess that this effort created a monster, at least in my eyes and the eyes of many others. The Commission adopted a "streamlined" enforcement system with "traffic ticket" level fines applicable both to major donors and late-contribution reports. The fines have mushroomed. This is no longer traffic ticket territory.[1] Moreover, the Commission adopted a dragnet, strict-liability approach to major donor fine enforcement (so called "non-streamlined" cases), using the very electronic records Miller used.

Since 1999, more than four years of the "streamlined" and non-streamlined enforcement focus under this system has produced hundreds of stipulations and more than a million dollars in fines. You have vivid evidence of that on every Commission enforcement agenda, including this one. (Items 4, 8-14, 18a-p, and 19.)[2]

The creaky premise of this enforcement system is that the donations are not publicly disclosed when the recipient discloses them. Thus, duplicate disclosure by both parties is required. Then, if the donor hasn't filed, the donor's contribution is verified from ... the recipient's filings compiled and reported by the Secretary of State, at its Cal-Access Website.

Lack of meaningful notice to donors is at the center of the "donor compliance" problems. In large part, this failure falls at the Commission's doorstep. The existing regulation actually is incomplete and thus misleading. The amended language of the

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[1] Last year, the Federal Election Commission reviewed and modified its streamlined late-filing enforcement system out of concerns widely expressed, and concurred in by the FEC's Commissioners, that the dragnet enforcement approach was chilling to participation in the political process.

[2] Moreover, major donor violation cases have constituted 72.4% or 197 of the 272 reported regular and streamlined enforcement decisions, stipulations or settlements considered or approved by the Commission from its December 2002 meeting to and including its December 2003 meeting. Data from 1999 through 2002 are likely to realize comparable numbers and percentages.

notice would require the recipients of large contributions to notify donors of the requirement that if a person became a major donor at or before a "late contribution" reporting period, the donor's $1,000 or greater contribution *will* trigger a special 24-hour report by that donor.[3] Now, hapless donors will at least receive accurate notice of their exposure to these special "late contribution" reporting requirements.

Has the Commission over the past few years admitted its own partial responsibility for a system and "safe harbor" notice language that has been misleading to donors? No. Nor has this affected the Commission's approach to fines. While this regulation closes the gap, the whole debacle begs the real question:

> Why is there any remaining justification for separate donor reporting at the state level, particularly when the Secretary of State's Cal-Access system's searchable data base permits the identification of donors' contributions made to candidates, political parties, PACs and ballot measure committees that file electronically?

Moreover, if electronic filing systems exist at the local level (where the problem, if anything, is less significant because the universe of recipients and donors is much smaller) what remaining justification exists for state regulation of donors at all?

It's time for the Commission and the Legislature to look seriously at ending these duplicative, unnecessary and unfair filing requirements. Hundreds of donors who had no intention to avoid public disclosure, who simply wanted to participate in the political process by making lawful contributions to candidates and committees they wish to support, and who didn't understand the filing requirements (and special filing requirements) attendant such contribution activity, have been fined in large dollar

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[3] Regulation 18427.1(a) was first amended to contain the "may require a 24-hour late contribution report" in 2001, some 15 years after the original notice was formulated. Throughout that period, the 24-hour reporting requirement was applicable. The FPPC began its aggressive late contribution report enforcement program in 1999, two years *before* amending the notice to first advise of a possible 24-hour disclosure requirement..

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amounts.

Major recipient committees, such as recent statewide campaigns and political parties have made substantial efforts to notify donors of their filing requirements or assist major donors with their major donor and late contribution report filings. Our clients have undertaken these efforts for the obvious reasons: (a) to spare their donors the surprise and pocketbook shock of what amounts to little more than a delayed tax on their political contributions, and (b) to try to keep donors from abandoning future political contribution activity out of a sense of risk and liability they experience when confronted with fines and penalties. In some instances, our clients have taken the extraordinary step of filing major donor reports and late contribution reports on behalf of the donors, without their permission, but willing to seek their forgiveness later. There must be a better system. Fortunately, there is.

The Bi-Partisan Commission on the Political Reform Act of 1974 (the McPherson Commission) recommended (a) raising major donor thresholds from $10,000 to $100,000, and (b) upon the Secretary of State's full implementation of an electronic disclosure system with a searchable database that permits adequate donor searches based on contributors, the elimination of separate major donor reporting. (Final Report and Recommendations, Recommendation No. 3)

While the first McPherson Commission recommendation was ignored by the Commission and the Legislature, I respectfully suggest the time is now ripe to start down this legislative path.

Very truly yours,

Charles H. Bell, Jr.

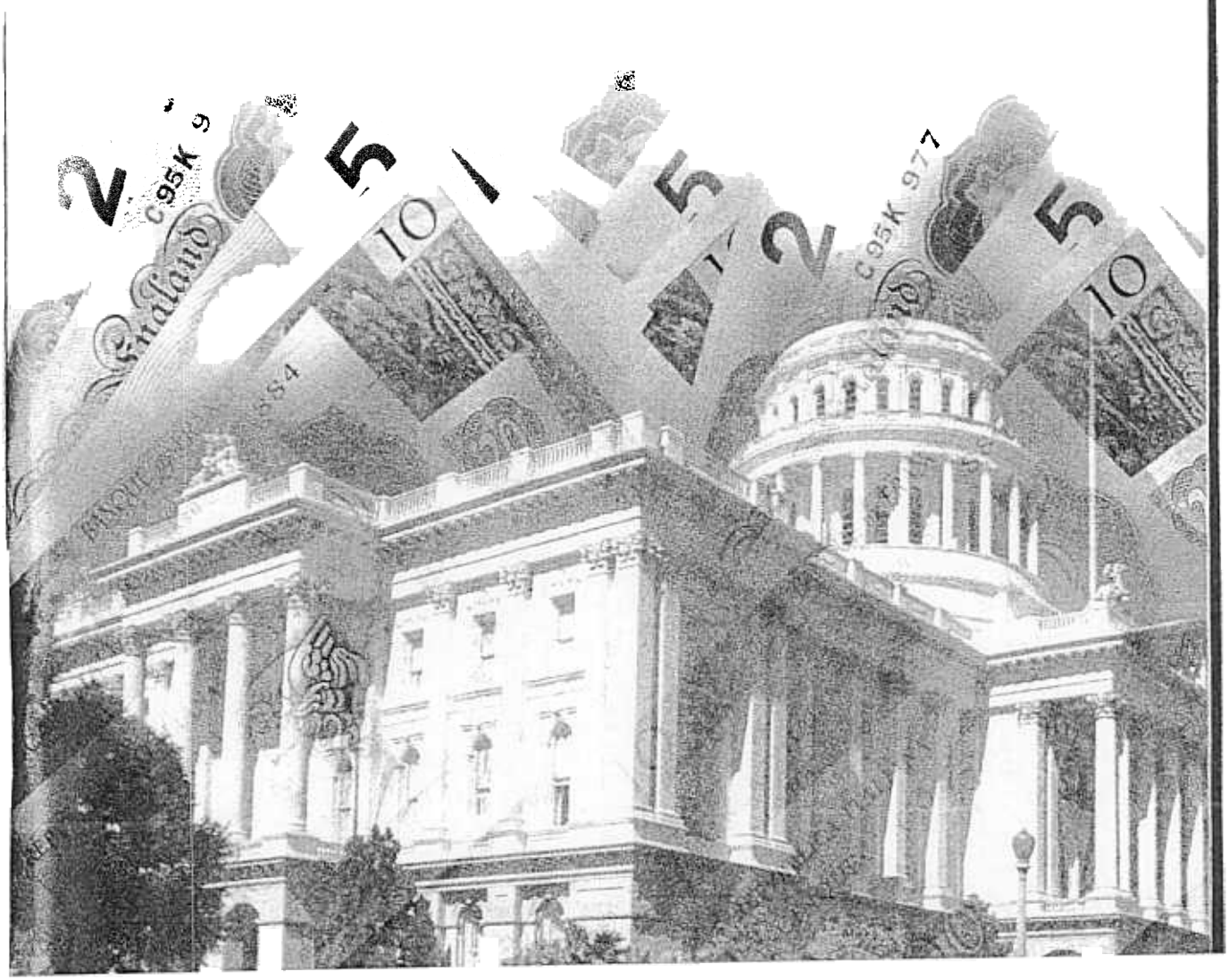
CHB:sa
Attachment

BIPARTISAN COMMISSION ON THE POLITICAL REFORM ACT OF 1974

Overly Complex and Unduly Burdensome

The Critical Need to Simplify the Political Reform Act

Final Report and Recommendations



RECOMMENDATION NO. 2

Raise Committee Qualification Threshold

The Political Reform Act should be amended to increase the annual threshold for qualification as a recipient committee or independent expenditure committee from $1,000 to $5,000.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the current thresholds for qualification as a recipient committee or an independent expenditure committee have not been adjusted for inflation during the past 15 years and are too low. A $5,000 threshold for such committees would also be consistent with federal law establishing campaign committee qualification.

While the Bipartisan Commission certainly recognizes that differences exist between local and state campaign committees, no such distinction was created in the original Political Reform Act, and the Commission does not believe that such a distinction should now be created. Raising the committee qualification thresholds would permit "grass roots" activities without triggering complicated disclosure requirements that are likely otherwise to discourage political participation. The Bipartisan Commission specifically considered public testimony and the results of the Focus Group Studies that the current system was too complicated. Raising the committee qualification thresholds would address some of these concerns. (See Chapter 5A, Focus Group Finding No. 2.)

RECOMMENDATION NO. 3

Raise Major Donor Qualification Threshold

The annual threshold for qualification as a "Major Donor" committee should be raised from $10,000 to $100,000. After the Secretary of State fully implements electronic disclosure and creates a database that permits adequate data searches based on contributors, the requirement for Major Donor committee disclosure should be eliminated.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the current threshold for qualification as a Major Donor" committee has not been adjusted for inflation during the past 15 years, imposes an onerous burden on certain campaign contributors, and is too low. The Bipartisan Commission was guided in part by the proposed measure, Proposition 25, drafted by campaign reform advocate Tony Miller that would have raised the Major Donor threshold to $100,000.

California is quite unique in its requirement for Major Donor filings, including the Late Contribution Reports that Major Donor committees are required to file. This has led to many unintentional violations of the Political Reform Act, with little public harm resulting due to the fact that the recipients of the Major Donor's contributions provide reciprocal disclosure. The Bipartisan Commission also concludes that Major Donor reporting will become unnecessary once electronic filing has been fully implemented by the Secretary of State. Specifically, the Bipartisan Commission believes that the current purpose of Major Donor disclosure—easily locating all contributions by a single contributor—could be readily and efficiently accomplished by data searches of candidate and committee reports filed electronically.